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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

WAYNE STAUCH, an Oregon resident, dba
Bambi's Nursery,

Plaintiff,

v.

MC BRO LLC, a Colorado limited liability
company dba Reindeer Ranch; and **SCOTT**
TIMOTHY MC KEE, a Colorado resident,

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
RELIEF**

(28 U.S.C. §2201–2202)

DEMAND FOR JURY TRIAL

Plaintiff seeks declaratory relief pursuant to 28 U.S.C. §2201– 2202 that it does not infringe Defendants' copyrights.

PARTIES

1.

Plaintiff Wayne Stauch is a sole proprietor of Bambi's Nursery (hereinafter "Bambi's"), which has its primary office in Oregon. Bambi's has been in the business of operating Christmas tree farms and nurseries since 1971, and also offers selected holiday-

themed products for sale. Both trees and products are offered for sale by Bambi's through retail and wholesale channels. Wayne Stauch has owned Bambi's since 1971, is held in high esteem by customers and peers, and has a well-established reputation as a reputable business operator.

2.

Defendant Mc Bro LLC is a domestic registered entity formed in the state of Colorado. Defendant Scott Timothy Mc Kee is a resident of the state of Colorado. On information and belief, Scott Timothy Mc Kee is an employee, officer or member of Mc Bro LLC.

JURISDICTION

3.

This Court has jurisdiction as there is diversity among the parties and the amount in controversy exceeds \$75,000 pursuant to 28 U.S.C. §1332.

4.

This Court also has jurisdiction as this action for declaratory judgment arises under the United States Copyright Act of 1976, 17 U.S.C. §101 *et. seq.*

FACTUAL BACKGROUND

5.

Along with other products, Bambi's manufactures and sells wooden reindeer, in a variety of sizes, referred to as "Christmas Critters." This reindeer is designed by Bambi's based on traditional and multivarious wood crafts and homemade goods. Wooden reindeer have been well known for at least fifty years, and offered at Christmas tree lots and elsewhere for sale in small quantities over many years.

6.

Bambi's Christmas Critters reindeer design has several features common to

previously known wooden reindeer. In addition, the Bambi's Christmas Critters reindeer was designed for utility in ease of manufacture and assembly. Many design decisions, including those which allow the reindeer to easily be assembled by a customer from component parts, were principally based on utility.

7.

On or about September 6th and 7th, 2013, Bambi's presented their Christmas Critters reindeer at the Pacific Northwest Christmas Tree Show in Portland, Oregon. Wayne Stauch was present at the Bambi's display booth at which the reindeer were displayed. Representatives of Mc Bro LLC were in attendance and observed the reindeer. The representatives of Mc Bro LLC took the opportunity to ask several questions of Mr. Stauch regarding the Christmas Critters reindeer.

8.

On or about September 12, 2013 Copyrights VA 1-882-706 and VA 1-882-989 (hereinafter, the "Mc Bro Copyrights") were registered with the US Copyright Office. The application for registration recited the author as Scott Timothy Mc Kee and the copyright claimant as Mc Bro LLC. Copies of the registration certificates and images of the works are attached as Exhibit A.

9.

Mc Bro LLC and non-party Pursell Manufacturing, Inc. operate in the same markets and may compete with Bambi's. The parties are known to one another and engage in regular business and communication with one another. In the period from September 2013 to September 2014, no demands were made by Mc Bro LLC to Bambi's relating to the Mc Bro Copyrights.

10.

On or about October 3, 2014, David Weinstein, an attorney representing Mc Bro

LLC, mailed a letter to Bambi's alleging that the Mc Bro Copyrights were owned by Mc Bro LLC, that they covered certain wooden reindeer, and that the Christmas Critters were infringing upon the Mc Bro LLC designs.

11.

Mc Bro LLC manufactures and sells wooden reindeer via retail and wholesale.

12.

Wooden reindeer have been produced widely throughout the United States, and elsewhere, for many years prior to the formation of Mc Bro LLC. There is great variety among the works, many of which are in the public domain. The reindeer produced by both Bambi's and Mc Bro LLC have in common many features with prior works, including features implicit in developing a representation of a reindeer: four legs, a head, a body, nose and eyes, etc.. The works produced by both Bambi's and Mc Bro LLC are minimally processed natural products which take their shape principally from two log segments: a larger log segment for a body, with a smaller log segment for a head. Twigs, branches, and boughs make up the vast majority of the works.

13.

The Mc Bro Copyrights depict wooden sculptures with minimal processing. The commercially produced works, produced by either party, are individual and idiosyncratic, reflecting the method of manufacture and the materials used. No two products by either party are identical.

14.

Plaintiff and Defendants have a genuine dispute regarding whether the Christmas Critters reindeer infringe upon the Mc Bro Copyrights. Defendants have made credible threat of immediate litigation to cease and desist manufacture and sale of the Bambi's Christmas Critters reindeer.

FIRST CLAIM FOR RELIEF

(Invalidity of Copyright)

15.

Plaintiff reasserts and alleges paragraphs 1-14 inclusively as though set forth in their entirety herein.

16.

Plaintiff requests an order declaring that the alleged copyrights are invalid and unenforceable for the following non-inclusive reasons:

(a) an absence of sufficient creativity and originality in the works to be entitled to copyright protection or registration;

(b) the works consist merely of a combination of known elements, depictions and shapes, known in the public domain or the copyrighted works of others; and

(c) the works are depictions of the idea of a reindeer and ideas are ineligible material for copyright.

SECOND CLAIM FOR RELIEF

(Non-Infringement)

17.

Plaintiff reasserts and alleges paragraphs 1-16 inclusively as though set forth in their entirety herein.

18.

Plaintiff is entitled to a judgment declaring that he is not infringing, has not infringed, and is not liable for infringing any alleged copyright owned by Mc Bro LLC relating to wooden reindeer, either directly or through inducement or by contribution.

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THIRD CLAIM FOR RELIEF

(Fair Use)

19.

Plaintiff reasserts and alleges paragraphs 1-18 inclusively as though set forth in their entirety herein.

20.

Plaintiff is entitled to a declaratory judgment that Plaintiff's use of Defendants' alleged copyrights, if any, is fair use pursuant to 17 U.S.C. §107.

FOURTH CLAIM FOR RELIEF

(Inequitable Conduct and Misuse of Copyright)

21.

Plaintiff reasserts and alleges paragraphs 1-20 inclusively as though set forth in their entirety herein.

22.

Plaintiff is entitled to a judgment declaring that Defendants are not entitled to enforce the alleged copyrights against Plaintiff due to inequitable conduct, misuse of alleged copyright and unfair competition.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment awarding him the following relief:

(a) On the first claim for relief, a declaration that the alleged copyrights asserted by Defendants are invalid and unenforceable;

(b) On the second claim for relief, a declaration that Plaintiff does not infringe any valid copyright owned or asserted by Defendants relating to wooden reindeer;

(c) On the third claim for relief, a declaration that Plaintiff's use of any valid copyright owned or asserted by Defendants relating to wooden reindeer is fair use;

(d) On the fourth claim for relief, a declaration that Defendant is barred from asserting or enforcing any valid copyrights against Plaintiff relating to wooden reindeer;

(e) An order awarding all fees, costs, and expenses incurred in connection with this action; and

(e) An order awarding such other and further relief as this Court deems just and proper.

DATED: December 2, 2014.

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By 

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